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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,214	08/14/2001	Burt Notarius	WIIP:101aUS_	2468
24041	7590	08/11/2005	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			JANVIER, JEAN D	
			ART UNIT	PAPER NUMBER

3622

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/929,214

Applicant(s)

NOTARIUS ET AL.

Examiner

Jean Janvier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Specification*

### *Claim Status*

Claims 1-15 are currently pending in the Instant Application.

### *Claim Objections*

Claim 14 is objected to because of the following informalities:

Concerning claim 14, lines 6 and 7, “generating, using said channel hub, a set of possible product offerings from at least one supplier” are interpreted as - -the channel hub has made available products from a supplier to the channel members or retailers during a certain time period - - and in accordance with the specification [0019].

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 (including claims 2-5) is rejected under 35 USC 112, second paragraph for being indefinite. In the limitations “receiving an offer from at least one wine/spirit supplier **to pay for a solicitation to at least one identified consumer of a participating retail establishment** for a selected set of products”, the payment is to be made to the at least one identified consumer, but

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not to the retailer as the wherein clause introduced by the amendment to the claim seems to indicate. The confusing claim language here comes from **paying for a solicitation to at least one identified customer of the retailer**. Having said that, it also appears that the specification does not provide any relevant information regarding the above limitations. For examination purpose, the claim will be broadly interpreted or examined.

Claim 1 (including dependent claims 2-5) is rejected under 35 USC 112, second paragraph for lacking proper antecedent basis. Indeed, the claim recites in line 12 "...wherein said computer **is part of said channel hub**". However, no "**channel hub**" has not been thus mentioned in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Clark, US Patent 6,351,738.

As per claims 1-15, Clark discloses a collective business system or hub business entity (channel hub) including participants (retailers) engaged in a common field of business endeavor, a plurality of suppliers (wine/spirit suppliers), whose products or goods will be sold by the retailers (based on some criteria). The hub business entity manages transactions between the suppliers, the participants and their customers. Under the system or business agreement, the independently owned and operated participants or retailers are assigned geographically protected business locations, as well as one or more of volume discounts of goods and services, national marketing capacity, discount capital financing for purchase of costly technology and machinery, access to information technology, logistics support or other business support mechanisms. The assets of the hub business entity are substantially liquid asset based and the hub business entity enables, controls and derives income from transactions between the suppliers and participants. The system enables the participants to compete effectively with much larger corporate or similar entities or franchises in the same or similar industry or profession without sacrificing their independence (See abstract; fig. 4).

Here, the hub business entity (HBE) has only minimal capital requirements, most of which are devoted to start-up costs. The HBE's assets will be comprised of cash, receivables and state-of-the-art technology. The HBE preferably would hold no inventory or other substantial tangible assets, although it will assume credit risks in conjunction with group purchasing programs. Its business operations are preferably managed and accomplished by a minimum staff of individuals disciplined in, at least, national marketing and sales, group purchasing, creative financing and technology. In other words, the HBE facilitates business transactions between the

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retailers and the suppliers over a communication means or network (communicating product offerings from a supplier to a retailer during a transaction).

Once established, the HBE will offer a variety (a set) of premium products and services from the suppliers to a group of independently owned and operated participants or retailers, in a common business or industry, who agree to sell the suppliers' products (wines) and services. Because of the geographical exclusivity afforded by the HBE, each participant is insured that the HBE will not also support another participant or retailer within the described geographical territory, thereby providing a competitive advantage similar to the one available in the franchise industry.

Furthermore, operation of the HBE (channel hub) is preferably conducted by a suitable electronic commerce ("e-commerce") system to which all participants or retailers will be required to join. The HBE e-commerce system will link the HBE, selected suppliers, participants and customers in an essentially paperless network of commerce. **The participants will be able to access product information from the selected suppliers, over the Internet, and submit orders directly to the HBE's selected vendors or suppliers (channel hub communicates product offerings from the suppliers to the retailers).** The vendors or suppliers, however, will invoice the HBE and the HBE in turn will invoice the participant for the purchases. By assuming the credit risk for a large volume of transactions, the HBE is able to negotiate better prices than individual participants might otherwise obtain for themselves from the suppliers. The HBE will receive commissions or rebates from the vendors, some or all of which may be shared at the discretion of the HBE with the participants to further lower the cost of the purchases. In addition, the e-commerce system will allow participants to access software programs offered by the HBE.

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Customers may also access the HBE to obtain information and technology services, while purchasing goods and other services directly from the participants.

See col. 3: 45 to col. 6:14; col. 11: 3-39;

Additionally, because of the many transactions between the suppliers and participants, the suppliers may offer volume rebates or other incentives that may be conveyed by HBE through e-commerce system to participants. Also, through the vehicle of bulletin boards, news pages, hyperlinks and other means of conveying information on the HBE e-commerce system website, the participants and suppliers may continuously access and exchange information among themselves. FIG. 6 also represents a typical manner by which the HBE e-commerce system 422 links participants 414, 414' with customers 418 while providing the participants with global exposure and brand name recognition marketing and sales through its relationship with suppliers 424 of goods and services. HBE 412 provides individual participants 414, 414' with greatly enhanced marketing and sales capability and presence by virtue of the HBE's establishment and maintenance of an Internet website 426. Website 426 may be created by HBE personnel or through a supplier 424. As is known, website 426 may be dedicated to providing any combination of the advertising, news, bulletin board, electronic mail, hyperlinks, electronic sales or other beneficial services normally supported by a sophisticated multi-functional website. Preferably, HBE 412 supplements its and, derivatively, its participants' Internet exposure through marketing efforts 428 including, but not limited to, advertising, public relations, trade show presentation or other disciplines which may serve to broaden potential pool of leads or customers of the HBE 412 and participants 414, 414'. The HBE 412 provides itself and participants 414, 414' with a pool of customers while simultaneously providing eligible customers 418 with access

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to the goods and services offered by the participants. Customers 418 may in turn access e-commerce system 422 for information or to order purchases of desired goods and services from participants 414, 414'. Customers 418 pay HBE 412 through e-commerce system 422 and the desired goods and services are delivered by the participants to the customers (col. 11: 62 to col. 12: 34).

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 USC 102(b) as being anticipated by Anderson, US Patent 5, 974, 396.

As per claims 1-15, Anderson discloses a method of and a system for gathering and analyzing customer and purchasing information permits a retailer or retail chain to process transactional information involving large numbers of consumers and consumer products. Product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters. Consumers are similarly grouped into consumer clusters based on common consumer demographics and other characteristics. Consumer retail



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transactions are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response. Queried information from the database may be communicated to a printing subsystem for printing promotional literature directed to particular customers based on cluster information stored in the database (channel hub). See abstract; Col. 2: 24 to Col. 4: 60.

### **Response To Applicant's Arguments**

First of all, contrary to the Applicant's remarks and regarding the 112(2) Rejection, the amendment to claim 1 appears to be more confusing since the claim still **receiving by a retailer from a supplier an offer to pay for a solicitation to at least one identified customer of the retailer (emphasis added)**. Accordingly, the payment goes to the at least one identified customer of the retailer, but not to the retailer himself as the wherein clause seems to indicate or suggest. The confusing claim language here comes from **paying for a solicitation to at least one identified customer of the retailer**. The 112(2) Rejection is still maintained.

Second of all, and in general, the claimed invention does not necessarily recite "a supplier offering to pay a retailer for a solicitation", but rather - **-a retailer receiving an offer from a supplier to pay for a solicitation to at least one customer of the retailer--**. In

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**other words, the retailer receives the so-called offer from the supplier, but the payment goes to the at least one identified customer instead.** Further, regarding claim 1, the Applicant contends that the prior art (Clarke) does not recite “a channel hub analyzing information”. First and foremost, claim 1 never recites “a channel hub analyzing information” or any “channel hub” whatsoever. Accordingly, and throughout the Applicant’s response, the argued limitations are not disclosed in the claims and thus, the Applicant is inappropriately or inadvertently reading limitations from the specification into the claims.

At least for the above reasons, the Applicant’s arguments, as presented above, are not plausible and thus, the current **Office Action has been made Final.**

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Eric W. Stamber, can be reached at (571) 272- 6724.

Non-Official- 571-273-6719.

Official Draft : 571-273-8300

08/06/05

**JDJ**

**Jean D. Janvier**

**Patent Examiner**

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**JEAN D. JANVIER  
PRIMARY EXAMINER**

A handwritten signature in cursive script, appearing to read "Janvier Jean D.", written over the printed name and title.